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 I certify that a copy of the foregoing document to which this certificate is attached was served on the attorney(s) of record for defendant(s) via telefax/ mail/ personal delivery on the 22nd day of May, 2003

UNITED STATES ATTORNEY

by Christina DeChenne

Chief Judge Coughenour

**CC TO JUDGE DJ**

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BY AT SEATTLE  
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 WESTERN DISTRICT OF WASHINGTON DEPUTY

UNITED STATES DISTRICT COURT  
 WESTERN DISTRICT OF WASHINGTON  
 AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOBECHI ENYINNAYA  
 ONWUHARA,

Defendant.

NO. CR03-011C

GOVERNMENT'S SENTENCING  
 MEMORANDUM



CR 03 00011 #00000039

**I. Introduction**

The United States hereby files its Sentencing Memorandum in this case. The United States recommends that the Court sentence defendant in the middle of his applicable guideline range of 18 to 24 months, followed by three years of supervised release.

**II. Factual Background**

The United States agrees with the factual statement set forth in the Presentence Report.

As described, on December 12, 2002, defendant Onwuhara attempted to use an unauthorized Discover card and counterfeit Texas driver's license to obtain a \$5,000 cash advance at the Washington Mutual Bank in Lynwood, Washington. Following the defendant's arrest, Special Agents with the United States Secret Service discovered that the defendant had made other miscellaneous charges to the unauthorized credit cards in the his possession in the States of Washington and Oregon.

1 Special Agents also learned about three pending cases against the defendant for  
2 unauthorized credit card use in the State of Texas. The first Texas case arose on April  
3 16, 2002, in Denton County, Texas, when the defendant was arrested by Lewisville  
4 Police for using unauthorized credit cards and counterfeit Texas driver's licenses in the  
5 names of David Smith, Paul Brophy, Riyad Hossainy, John D Smith, and Kevin G.  
6 Olson. The total actual and attempted loss figure associated with the use of credit cards  
7 in Denton County is \$70,460.43

8 The defendant subsequently was arrested on July 19, 2002, by the Arlington Police  
9 in Tarrant County, Texas, when he attempted to use an unauthorized credit card in the  
10 name of Allan Wirth at a CompUSA store. This resulted in an attempted loss figure of  
11 \$2,091.33.

12 Finally, on August 5, 2002, the defendant was arrested by Coppell Police in  
13 Dallas County, Texas, when he attempted to claim two unauthorized credit cards sent for  
14 pick up at the Airborne Express Office in Coppell, Texas. The credit cards were  
15 provided to Onwuhara in a controlled delivery, and therefore there is no actual loss  
16 associated with these unauthorized credit cards.

17 Total losses and attempted losses from the three Texas cases and the case arising in  
18 the Pacific Northwest have been incorporated into the current total loss/attempted loss  
19 figure of \$86, 447.21. County Prosecutors from Denton, Tarrant, and Dallas Counties  
20 have agreed to dismiss their pending cases against the defendant if losses from their  
21 cases are taken into consideration in the instant case.

### 22 **III. Guideline Calculations**

23 The United States agrees with the United States Sentencing Guidelines (U.S.S.G.)  
24 calculations set forth in the Presentence Report.

#### 25 **A. Use of Means of Identification to Produce Other** 26 **Means of Identification**

27 Contrary to defense counsel's suggestion, the two- point enhancement under  
28 U.S.S.G. § 2B1.1(b)(9)(C)(i) is applicable to defendant Onwuhara in this case.

1 Section 2B1.1(b)(9)(C)(i) applies when the offense involves the unauthorized  
 2 transfer or use of *any means of identification* to produce any other means of  
 3 identification. Under Application Note 7 to U.S.S.G. § 2B1.1, for the purposes of this  
 4 guideline provision, “means of identification” is defined in 18 U.S.C. §1028(d)(4).  
 5 Section 1029(d)(4)(A), in turns, defines “means of identification” to include any name,  
 6 number, social security number, or date of birth that could be used alone or in  
 7 conjunction with other information to identify a specific person.

8 Here, ONWUHARA received by email from his associates a list of credit card  
 9 holders’ names, addresses, telephone numbers, date of birth, and social security  
 10 numbers, from which *ONWUHARA* selected the credit card holders in whose name  
 11 unauthorized credit cards and counterfeit driver’s licenses would be produced. This is  
 12 confirmed by ONWUHARA’s own statement to police following his arrest, and the list  
 13 of credit card holders’ identification information seized from him at the time of his  
 14 arrest. Thus, when ONWUHARA obtained this information about credit card holders,  
 15 and then used that information to select the credit card holders in whose names  
 16 unauthorized credit cards and counterfeit driver’s licenses would be produced by his  
 17 associates, he thereby used a “means of identification” to produce another means of  
 18 identification

#### 19 **B. Reckless Endangerment During Flight**

20 Defendant Onwuhara mistakenly objects to the two-point enhancement for reckless  
 21 endangerment during flight under U.S.S.G. § 3C1.2.

22 Section 3C1.2 of the Sentencing Guidelines provides that the District Court may  
 23 adjust a defendant's sentence upward two levels "[i]f the defendant recklessly created a  
 24 substantial risk of death or serious bodily injury to another person in the course of fleeing  
 25 from a law enforcement officer. . " U.S.S.G. 3C1.2. Under this section, a defendant is  
 26 expressly made responsible “for his own conduct and for conduct that he aided or abetted,  
 27 counseled, commanded, induced, procured, or willfully caused.” U.S.S.G. 3C1.2,  
 28 Application Note 5.

Attached to this Sentencing Memorandum as Exhibit A is a true and correct copy of a Lynnwood Police Department report authored by Sgt. Mark Demetruk, Badge No. 412. As shown in this report, on December 12, 2002, to avoid capture for ONWUHARA'S attempted use of the unauthorized credit card at the Washington Mutual Bank, defendants NNABUE (driver) ONWUHARA (passenger) left the Washington Mutual Bank in a rented Plymouth Neon and drove with extreme recklessness, placing themselves, the police, and the public at extreme risk, while being pursued by uniformed police officers in three police cars with emergency lights and sirens. The chase occurred in the middle of the business day between 11:30 a.m. and noon in Lynnwood, on wet roadways, during the height of the Christmas shopping season. Defendants first began by evading a uniformed police officer and a marked police car that had parked off the right rear quarter panel of the Neon. Ignoring the police emergency lights and later police sirens, the Neon took evasive measures to avoid police cars, striking sidewalk curbs at least two times during the pursuit. In the ensuing police chase, defendants ran at least six stop signs, and reached speeds up to 70 miles per hour in 30 miles per hour zones. During the chase, both defendants threw evidence from the window of the car. When police finally forced the Neon into a church parking lot, the NNABUE surrendered as he stepped out of the driver's seat, but ONWUHARA fled on foot through the residential neighborhood. Police were forced to call in a canine unit and set up a containment area to locate ONWUHARA, who eventually was located and arrested through a report from a homeowner.

Such a high speed car chase is precisely the kind of behavior that warrants an enhancement for reckless endangerment during flight. See United States v. Luna, 21 F.3d 874, 885 (9th Cir.1994)(enhancement applied where robbers ran three stop signs, refused police attempts to pull over the car, and then abandoned the running car, fleeing on foot), United States v. Hernandez-Rodriguez, 975 F.2d 622, 626 (9th Cir.1992)( "[under] section 3C1.2 . . . the offense level could be increased for a high- speed chase. . . ").

1 Defendant ONWUHARA objects, however, that he was merely the passenger and  
2 therefore should not receive this enhancement. Whether ONWUHARA "aided or  
3 abetted, counseled, commanded, induced, procured, or willfully caused" such conduct,  
4 however, may be inferred from the circumstances of the getaway, including "conduct  
5 occurring before, during, or after the high-speed chase." United States v. Young, 33 F.3d  
6 31, 33 (9th Cir. 1994). Thus, in United States v. Luna, the Court held that the passenger,  
7 Torres, aided and abetted the abandonment of the running car in a residential area  
8 following the police chase, which was enough to constitute evidence of such aiding and  
9 abetting behavior. 21 F.3d at 885 See also United States v. Conley, 131 F.3d 1387,  
10 1390-91 (10th Cir.1997) (enhancement applied to passengers in getaway car that engaged  
11 in high-speed chase following bank robbery, given evidence that passengers planned the  
12 armed robbery, were armed, and required a quick getaway), cert. denied, 523 U.S. 1087  
13 (1998).

14 Here, the evidence demonstrates that ONWUHARA clearly procured, aided and  
15 abetted, and encouraged the conduct constituting reckless endangerment. ONWUHARA  
16 left the bank after the failed fraudulent transaction, and was immediately driven away in  
17 the reckless manner described above. During the chase, while NNABUE was driving the  
18 Plymouth Neon recklessly at a high rate of speed, ONWUHARA threw items of evidence  
19 from the car. This conduct itself would naturally cause other drivers on the road to  
20 swerve to avoid the unknown items being discarded, and therefore itself constituted  
21 reckless behavior. At no time was there any suggestion that ONWUHARA attempted to  
22 persuade NNABUE to pull over in response to the police chase. Moreover, when the  
23 Plymouth Neon finally was stopped by police, ONWUHARA fled on foot, requiring that  
24 police use a canine unit and a containment area to locate him. Everything that Onwuhara  
25 did -- from the moment he entered that car until he was captured -- is consistent with an  
26 intent to induce and encourage NNABUE to drive the car recklessly. Therefore, this  
27 enhancement applies.  
28

**IV. Recommendation**

The United States recommends a sentence in the middle of the defendant's guideline range of 18 to 24 months.

The Government acknowledges that there is support for a low-end recommendation made by the United States Probation Office in this case. Defendant made admissions to investigators shortly after he was arrested, and he agreed to plead guilty relatively early after the case was filed.

On the other hand, the defendant engaged in unlawful conduct in the State of Washington after being arrested three times for similar behavior in Texas in the just the previous eight months. Additionally, the defendant is receiving a substantial benefit through dismissals of all three Texas cases in return for his guilty plea in the instant case.

Taking all of these facts into consideration, the United States believes that a sentence in the middle of the applicable guideline range is appropriate.

DATED this 22<sup>nd</sup> day of May, 2003.

Respectfully submitted,

JOHN McKAY  
United States Attorney

  
LAWRENCE LINCOLN  
Assistant United States Attorney

# EXHIBIT A

EXHIBIT A



***Lynnwood Police Department***  
***Case #02-10071***

On December 12, 2002 at 1129 hours Lynnwood patrol units responded to a fraud in progress at the Washington Mutual bank located just inside the west doors of the Lynnwood Fred Meyers store (4615 196<sup>th</sup> St. SW). An update was given by dispatch that the suspect was leaving the store via the west doors. I was at the Lynnwood Police Dept. and responded to the call because of my close proximity. As I advised radio that I was responding Off. Jamison reported that he was in the Fred Meyers lot with an employee and began to give updates concerning the location of the suspect. Off. Jamison reported that the suspect(s) were still in the Fred Meyer west parking lot about to exit out onto 48<sup>th</sup> Ave. W. in a gold color vehicle. Off. Miller reported being with the vehicle as I arrived on scene. I observed Off. Jamison in full police uniform walking toward the suspect vehicle a gold Plymouth Neon with Oregon plates. Off. Miller parked his fully marked police vehicle off the right rear quarter panel of the suspect vehicle in order to contact the individuals inside. The gold vehicle started to drive off N/B through the parking lot. Off. Miller paralleled the vehicle and then turned E/B. As he did the suspect vehicle turned W/B and drove by Off. Miller ignoring his emergency vehicle lights that were on.

I was following the vehicle in my semi marked police vehicle and had my vehicles' emergency lights activated. I advised dispatch that I was in pursuit as the vehicle exited onto 48<sup>th</sup> Ave. W. N/B from the parking lots west driveway. Off. Miller had repositioned his vehicle, cantered on 48<sup>th</sup> Ave. W. at 194<sup>th</sup> St. SW with his vehicles emergency lights still on. The suspect vehicle accelerated and swerved hard right to go around the stopped patrol vehicle. As it did the suspect's vehicle right front wheel struck the curb damaging the rim cover. The suspect vehicle continued N/B on 48<sup>th</sup> Ave. W. failing to stop for the stop sign at 194<sup>th</sup> St. SW. The suspect vehicle attempted to make a left turn onto 192<sup>nd</sup> St. SW and ran onto the N/W curb. The suspect vehicle maneuvered off the curb and I followed it W/B on 192<sup>nd</sup> St. SW to 52<sup>nd</sup> Ave. W. at speeds up to 40 mph in a 25 mph zone. Again failing to stop for the stop sign at 52<sup>nd</sup> Ave. W. and 192<sup>nd</sup> St. SW. I had activated all emergency equipment by this time including the siren on my vehicle.

As the vehicle turned N/B onto 52<sup>nd</sup> Ave. W. Off. DeGabriele in a fully marked patrol vehicle with lights and siren joined in on the pursuit. It had just stopped raining and the roads were wet, traffic was light and had stopped upon hearing the police sirens. The suspect vehicle failed to stop for the stop sign N/B on 52<sup>nd</sup> Ave. W at 188<sup>th</sup> St. SW. The suspect vehicle increased its speed to 70 mph in a 30 mph zone. There was only one other car in front of the suspect vehicle in the 18400 block. The suspect vehicle slowed down and then passed on that vehicles right side. The suspect vehicle slowed again as it approached Hwy 99 and as it turned onto Hwy 99 it failed to stop for the stop sign before entering the Hwy.

I would classify the traffic flow on Hwy 99 as medium being somewhat heavier than the other surface roads. The suspect vehicle turned E/B onto 180<sup>th</sup> St. SW and

Sgt. Mark Demetruk #412

**EXH. A**





**Lynnwood Police Department**  
**Case # 02-10071**



accelerated to 60 mph in a 30 mph zone, again there was no traffic on 180<sup>th</sup> St. SW. As the suspect vehicle approached 44<sup>th</sup> Ave. W. it slowed down and ran the stop sign as it turned S/B onto 44<sup>th</sup> Ave. W. As I reached 44<sup>th</sup> Ave. W. no other vehicles were present except those stopped on 44<sup>th</sup> Ave. W. at Maple Road due to Officer Brinkman positioning of his vehicle with emergency equipment activated.

The suspect vehicle turned E/B onto Maple Road by turning into the W/B lane and then moving over to the E/B lane. As the suspect vehicle continued E/B, just after 42<sup>nd</sup> Ave. W. I observed the passenger throw items (assorted papers) out of the passengers window striking the 20 mph speed sign. The suspect vehicle continued E/B traveling 40 mph in a 25 mph zone. As the suspect vehicle reached 36<sup>th</sup> Ave. W. it failed to stop for the stop sign and turned left onto 36<sup>th</sup> Ave. W. N/B. There was heavy construction in the area and the suspect vehicle turned W/B into the Korean Emmanuel Church located at 17730<sup>n</sup> 36<sup>th</sup> Ave. W. The suspect vehicle drove to the rear of the church and was forced to stop. The driver exited the vehicle and gave himself up immediately the passenger fled on foot. Containment was set up and K9-5 was requested. The suspect was located in a water retention pond off Maple Road by containment officers. Lynnwood Officer Langdon recovered the paperwork that was tossed out of the vehicle by the passenger.

As I placed the suspected driver into custody he placed a wallet on the back of the gold vehicle. He stated that he wanted the wallet because it was his. I removed a large amount of cash (MAD001) from his right front pants pocket. He also claimed the money to be his. I identified him from a Washington State drivers' license as Abel Unabue 12-17-74. I then verbally advised him of his constitutional rights from memory. The suspect acknowledged his understanding of his constitutional rights and then agreed to talk to me without presence of consul.

Nnabue stated that he just drove a friend to Fred Meyers. He said he went into the store to buy some cigarettes and his friend wanted to get some bump removal for his hair since he just got it cut. Nnabue said he bought his cigarettes and went out to his vehicle that he rented from Thrifty on Pacific Hwy South. Nnabue said he does not know what his friend was doing. Nnabue when asked did not know what his friends name was or where he lived. Nnabue said his friend then came out to the car. After entering the car he saw the police officer coming toward him with his gun drawn, fearing that he was going to be killed he drove away, failing to stop for all police vehicles for that same fear.

I ran a full check on the Plymouth Neon bearing Or. license plates # YYS641. The vehicle returned clear and current to a rental car agency. Nnabue reiterated several times that he rented the vehicle from Thrifty rent a car. Nnabue asked what was going to happen to the vehicle since it needed to be back tonight or they would charge him for

**Sgt. Demetruk #412**



**Lynnwood Police Department**  
**Case # 02-10071**



another day. I told him that I was going to impound the vehicle and petition the court for a search warrant. Nnabue stated in the presence of Officer DeGabriele that he would give me permission to search the vehicle and that I do not need to get a search warrant. I then asked Nnabue "you do not care if I search your car", Nnabue stated "no, go ahead". I then conducted a search of the suspect vehicle removing the following items. From the drivers side front floor board a Samsung cellular telephone (MAD002). From the passenger side floor board two Nokia cellular telephones and assorted recharging plugs (MAD003). I also removed several computer e-mail print out pages from the floorboard (MAD004). From the rear seat I removed a blue gym bag containing assorted clothes and electronic items (MAD005). The rear seat had a pass through with access to the trunk. From the trunk area I removed a white Nordstrom's bag containing men's shirts and ties (MAD006) and a black gym bag containing more clothes, jewelry boxes and telephones (MAD007). I removed a Thrifty and Dollar car rental agreements (MAD010) from the passenger door sleeve. As I was walking back to my patrol vehicle I noticed another computer print out page similar to the ones located in the front of the suspect vehicle. A closer check showed it to be part of the same e-mail printout located in the suspect vehicle. I collected the page (MAD008) containing people's names, addresses, dates of births and social security numbers.

I transported Nnabue to the Lynnwood jail as Off. DeGabriele remained with the vehicle until the tow truck arrived. At the Lynnwood jail a closer look at Nnabue's wallet showed he had a Washington State identification card. The last name on the I.D. card was spelled "Nnabue" instead of Nnabue like what was printed on his drivers' license. Nnabue stated that this was a DOL error. I also located Discover credit cards in his wallet under different names. One of the wallets recovered at the 20 mph speed sign contained Texas drivers' licenses with Nnabue's picture on them with the names of the people issued the Discover card. I seized the wallet and it's contents (MAD009) as evidence. When I questioned Nnabue about this he just said that the guy on the license looked kind of like him. I stopped questioning Nnabue at this time knowing that CID would be questioning him further concerning the situation. I confiscated Nnabue's Modavo watch and silver color chain necklace (MAD012) and Alexanders' Modavo watch gold color chain and two silver color chains (MAD013) during the booking process, since receipts showed they had just purchased them. Off. DeGabriele turned over to me a pair of tan work boots (MAD014) he located in the black gym bag along with a sprint cell phone and two Samsung cell phones (MAD011).

I had Off. DeGabriele photo copy all items and place them into plastic bags. I entered all items into evidence at Lynnwood P.D. I completed seizure notices on the money, jewelry and cellular telephones confiscated from both Nnabue and his accomplice who unidentified at this time.

**Sgt. Demetruk #412**